IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O. O. C. J.
COMPANY PETITION NO.584 OF 2006

In th matter of M/s. Siddhayu Ayurvdic Rsearch Foundation Pvt. Ltd.

Amratlal Bhanji Shah, proprietor
M/s. Rajendrakumar & Bros. ..Petitioner.

....

Mr. Avinash N. Joshi for the Petitioner.
Ms. Chandana Salgaocar-Radia for the Respondent.

....

CORAM: **DR. D.Y. CHANDRACHUD, J.**

21st March, 2007.

P.C. :

1. The claim in the Company Petition is founded exclusively on Exh. A to the Petition which is a copy of the ledger account pertaining to the Respondent, maintained by the Petitioner. The ledger account shows an opening balance on 1st April, 2003 of Rs.30,23,820.48. Two payments made by the Respondent each in the amount of Rs. 10 lacs have been given credit for. There is another debit entry in the amount of Rs.25,650/- and an amount of Rs.10,49,470.48 is claimed to be due and payable by the Respondent. At the hearing of the Company Petition, it has been submitted that the claim arises out of goods sold, supplied and delivered during the period 2002-03.

2. In the affidavit in reply, the correctness of the ledger account has been disputed. The case of the company is that after supplies were made in 2002, accounts were reconciled and payments were made. The company has submitted that an amount of Rs.30,23,820.48 is shown as the opening balance but it has not been demonstrated as to how the opening balance as of 1st April, 2003 has been arrived at. Similarly, the entry for the debit of Rs.25,650/- does not pertain to the company. The company has disputed the statement contained in the Petition, that the Petitioner had sent the ledger account as reflected in the books of account for the period 1st April 2002 to 31st March, 2003. The company has submitted that on the own showing of the Petitioner, there will be no transaction after 31st March, 2003 and the entire claim has been barred by limitation.

3. Section 34 of the Evidence Act provides that entries in books of account including those maintained in an electronic form regularly kept in the course of business, are relevant whenever they refer to a matter into which the Court has to inquire, but such statements shall not alone be sufficient evidence to charge any

person with liability. The provisions of Section 34 came for interpretation before the Supreme Court in **Chandradhar Goswami v. Gauhati Bank Ltd.**[1] where the Court observed as follows :

> "It is clear from a bare perusal of the section that no person can be charged with liability merely on the basis of entries in books of account, even where such books of account are kept in the regular course of business. There has to be further evidence to prove payment of the money which may appear in the books of account in order that a person may be charged with liability thereunder, except where the person to be charged accepts the correctness of the books of account and does not challenge them. In the present case, however, the appellants did not accept the correctness of the books of account. We have already indicated that they went to the length of saying that the accounts were not correctly kept, and were fraudulent."

4. The same view was reiterated in **Central Bureau of Investigation v. V.C. Shukla**[2], where the Supreme Court following the earlier decisions reiterated that entries in books of account though relevant, are only corroborative evidence and it is to be shown further by some independent evidence that the entries represent honest and real transactions and that monies were paid in accordance with those entries.

5. The correctness of the account which has been

1 AIR 1967 SC 1058.
2 (1998) 3 SCC 410.

produced at Exh. A to the petition is seriously in dispute. The manner in which the opening balance of Rs.30,23,820.48 has been arrived at has not been explained. The underlying documents on the basis of which the claim is founded are not appended to the Company Petition. The Respondent has set up its defence by its reply dated 22nd June, 2006 to the statutory notice for winding up. In these circumstances, it cannot be stated that there is presently an ascertained sum or a debt due and payable. The following observations contained in the judgment of the Supreme Court in **Mediquip Systems (P) Ltd. v. Proxima Medical Ssystem GMBH**[3] must therefore apply to the situation as it obtains in the present case :

> "This Court in a catena of decisions has held that an order under Section 433(e) of the Companies Act is discretionary. There must be a debt due and the company must be unable to pay the same. A debt under this section must be a determined or a definite sum of money payable immediately or at a future date and that the inability referred to in the expression "unable to pay its debts" in Section 433(e) of the Companies Act should be taken in the commercial sense and that the machinery for winding up will not be allowed to be utilised merely as a means for realising debts due from a company."

6. The petition will therefore have to be dismissed

3 (2005) 7 SCC 42.

relegating the Petitioner to the remedy of establishing its claim in a suit. The Petition is accordingly dismissed.